

Krishnasamy Vs. Kannika

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SooperKanoon Citation : sooperkanoon.com/1167323

Court : Chennai

Decided On : Jul-25-2013

Judge : K.Ravichandrabaabu

Appellant : Krishnasamy

Respondent : Kannika

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 25.07.2013
CORAM THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
C.R.P.(NPD) No.2883 of 2008 Krishnasamy .Petitioner ..vs.Kannika .Respondent
Prayer: Civil Revision Petition filed under Article section 25 of the Pondicherry
Buildings (Lease and Rent Control) Act 1969 against the judgment and decree
dated 14.11.2007 made in R.C.A.No.5/2007 on the file of the Court of the
Appellate Authority under Rent Control Act (Principal District Judge) at
Puducherry, reversing the order dated 27.10.2006 made in H.R.C.O.P.No.45/2003
on the file of the court of the Rent Controller, Puducherry.

For Petitioner : Mr.T.P.Manoharan For Respondent : Mr.R.Subramanian

ORDER

The revision petitioner is the landlord.

The respondent is the tenant.

The landlord is aggrieved against the judgment and decree made by the learned Rent Control Appellate Authority in dismissing his application for eviction sought on the ground of willful default.

2.The case of the landlord/petitioner is as follows: The respondent's mother took the petition mentioned property on lease on 05.02.1982 for non residential purpose to run a book stall.

Thereafter, with the consent of her mother, the respondent became the tenant under the petitioner on 05.01.1991 for running the said book stall on a monthly rent of Rs.1,500/-.

The respondent paid a sum of Rs.4,500/- towards advance.

Thereafter, another lease deed was executed on 05.06.1994 with a monthly rent of Rs.1,800/-.

The respondent committed willful default in payment of rent from June 1994.

The petitioner issued a notice on 26.12.1994 demanding payment of arrears of rent and delivery of possession.

The respondent paid Rs.10,800/- being the rental arrears for six months through Banker's cheque along with a reply notice dated 02.01.1995.

On 06.01.1995, further sum of Rs.1,800/- was paid through banker's cheque.

Thus, the respondent paid the rental arrears from June 1994 to December 1994, which was received by the petitioner without prejudice to his right to file eviction petition.

The petitioner filed H.R.C.O.P.No.25/1995, seeking for eviction of the respondent on the ground of willful default.

He also filed H.R.C.O.P.Nos.19/1995 and 20/1995 on the ground of sub-lease and personal occupation respectively.

All the three petitions were allowed on 14.11.1997 and the appeals preferred against the same by the tenant were dismissed on 25.01.1999.

However, in C.R.P.Nos.952 to 954 of 1999, this Court by order dated 24.10.2002 allowed the civil revision petitions and set aside the order of eviction.

Thereafter, the respondent had willfully defaulted to pay the monthly rent from February 2003 to July 2003 to the tune of Rs.10,800/-.

After adjusting the excessive rental advance of Rs.4,200/-, the respondent was still in arrears to the tune of Rs.6,600/- upto the month of July 2003.

Hence, the tenant is liable to be evicted on the ground of willful default.

3.The case of the respondent/tenant is as follows: She denied the allegation of willful default in payment of monthly rent from February 2003 to July 2003.

The tenant's husband suffered serious illness and thus, he had to take treatment for a long time.

Therefore, she was forced to be away from Pondicherry very often to accompany her husband for taking treatment in Homeopathy and Siddha system.

Consequently, they were prevented from attending to their business for a long time and paying the rents until August 2003.

Thus, the delay caused was beyond their control.

The tenant met the landlord in the middle of August 2003 and explained the reason for the delay.

However, she had paid the rents before the fiRs.hearing of the H.R.C.O.P.Therefore, the default is not willful and consequently, the eviction proceedings initiated against her on that ground is not maintainable.

4.The learned Rent Controller by his order dated 27.10.2006 allowed the eviction petition by observing that the tenant had committed willful default as she failed to pay the rent without any just and reasonable cause.

The tenant preferred an appeal before the Rent Control Appellate Authority in R.C.A.No.5 of 2007.

By judgment and decree dated 14.11.2007, the Appellate Court allowed the appeal and dismissed the eviction petition on the reasons that no pre-suit notice was given by the landlord and that even before the fiRs.appearance in the R.C.O.P., the tenant has paid the entire arrears of rent.

Aggrieved against the said order of the Appellate Authority, the present civil revision petition is filed by the landlord.

5.Mr.T.P.Manoharan, learned counsel appearing for the petitioner/landlord submitted as follows: The tenant had admitted the arrears and however given four reasons for not making the payment viz., illness of her husband, pendency of compromise talk, demand of enhanced rent and malafide on the part of the landlord.

All the reasons given by the tenant were found not proved by the learned Rent Controller.

The Appellate Authority did not accept the reason of illness.

He has also not given any finding with regard to the other three reasons viz., pendency of compromise talk, demand for enhanced rent and malafide.

Without giving any specific finding on these reasons, the Appellate Authority erred in allowing the appeal.

Payment of arrears before the fiRs.hearing would not absolve the liability of the tenant.

The explanation to proviso under Section 10(2) does not contemplate mandatory notice to the tenant.

It is only optional.

When the landlord had not chosen to issue any notice demanding rent, then tendering of the same before the fiRs.hearing of the R.C.O.P.will not absolve the tenant's liability from eviction on the ground of willful default.

The Appellate Authority has not given any finding on the question of willful default.

Proviso to Section 10(2)(1) of the said Act will come into play only after the learned Rent Controller comes to a conclusion that the tenant has not committed willful default.

Even while making the payment before the fiRs.hearing of the R.C.O.P., the memo filed by the tenant under Ex.R.42 would show that it was made without prejudice to her right to contest the matter.

6.Learned counsel appearing for the petitioner in support of his contention relied on the following decisions: (i)1996 (2) LW752M.V.VENKIDUSWAMI PILLAI AND10OTHERS v.

S.SWAMINATHA RAO; (ii)2003(2)L.W231BALWANT SINGH & OTHERS v.

ANAND KUMAR SHARMA & OTHERS.(iii)2003(1) SCC123 E.PALANISAMY v.

PALANISAMY; (iv)2001(1) CTC356 K.S.PANDIAN v.

G.RUKMANI BAI AND THREE OTHERS.(v)2011(1) CTC526 GUMANI BAI v.

K.MUTHUSAMY; (vi)2002(1)LW796 MANICKKAMPILLAI v.A.SAKUNTALA & OTHERS.(vii)2000(1)SCC451,C.CHANDRAMOHAN v.SENGOTTAIYAN (DEAD) BY LRS AND OTHERS.7.Per contra, the learned counsel Mr.R.Subramanian appearing for the respondent/tenant submitted as follows: The landlord filed eviction petition on earlier occasion which culminated in filing of civil revision petitions before this Court.

In the said proceedings, the default period was from June 1994 to November 1994.

This Court found that there was no willful default for the said period.

A sum of Rs.6,000/- is lying with the landlord as advance.

After adjustment of Rs.4,200/- from the said advance amount, Rs.6,600/- will be the due which would represent only 3 = months rent.

The eviction petition was filed on 07.08.2003.

On the fiRs.hearing date viz., 05.09.2003, the tenant paid Rs.12,600/- being the entire arrears till that date.

Therefore, the default committed is not willful in view of such payment made on or before the fiRs.hearing date.

In this case, the landlord has not issued any pre-suit notice.

Therefore, the Court has got power to examine whether the default committed is willful.

In support of his contention, the learned counsel relied on the following decisions:
(i)2003(1) MLJ225KANNIKA v.

KRISHNASAMY; (ii) 2003(3) CTC348 P.M.PUNNOOSE v.

K.M.MUNNERUDDIN AND OTHERS.(iii)1997 (2) LW616 A.M.A.JABBAR v.

T.S.ABDUL BARI AND2OTHERS.(iv)1985(1) SCC581S.SUNDARAMPILLAI v.

V.R.PATTABIRAMAN; (v)2002(4) SCC204 RAJ.MUTHUKONE (DEAD) BY LRS.v.T.GOPALASAMI AND ANOTHER; 8.I have heard the learned counsel appearing on either side and perused the materials placed before this Court and also the case laws cited by them.

9.The point for consideration in this case is as to whether the default committed by the respondent /tenant in payment of monthly rent from February 2003 to July 2003 is willful and whether she is liable to be evicted on that ground.

10.Though the facts of this case as projected by the respective parties in their pleadings appear to be simple and uncomplicated, the way in which their case was

projected before this Court by their respective counsels makes it to appear as though it is so complicated involving several legal issues.

11.Before going into the legal issues of the matter, let me consider the factual aspects of the case which are, in fact, not disputed by either parties.

They are as follows: The petitioner is the landlord and the respondent is the tenant.

The monthly rent payable is Rs.1,800/-.

A sum of Rs.6,000/- is retained by the landlord towards advance amount.

The default period is from February 2003 to July 2003 viz., six months and thus a total sum of Rs.10,800/- was the rental arrears due and payable by the tenant to the landlord.

Based on the above facts, the landlord approached the learned Rent Controller and sought for eviction of the respondent.

The tenant, though admitted the default, had however given four reasons for not paying the rent in time.

They are as follows: ".1.Illness of the husband of the respondent, 2.There was a compromise talk, 3.Demand of enhanced rent and 4.the landlord acted with malafide.".

Thus, it is the contention of the tenant that though there was a default, the same is not willful in view of the abovesaid reasons.

12.The learned Rent Controller has found that there was no oral or documentary evidence placed to show that the husband of the tenant, who was examined as R.W.1, was taking treatment with homeopathy or siddha medicine.

It was also observed by him that R.W.1 has not stated anywhere as to where they were staying from February 2003 to July 2003.

While considering the second reason, the learned Rent Controller has found that the said compromise talk was initiated only subsequent to the filing of the R.C.O.P.as admitted by R.W.2.

In so far as the third reason viz., the alleged demand of enhanced rent is concerned, the learned Rent Controller found that nothing was suggested to the landlord/P.W.1 that he had demanded enhanced rent and that he refused to receive the agreed rent.

He also found that R.W.1 has not spoken anything in this regard.

On the question of not issuing notice by the landlord is concerned, the learned Rent Controller has observed that the arrears is Rs.10,800/- which is more than the advance amount paid by the tenant.

Thus, he observed that the tenant has failed to give satisfactory explanation for non payment.

With regard to the payment of entire arrears on the date of the fiRs.hearing, the learned Rent Controller found that in the absence of any sufficient explanation for not paying the rent during default period, especially when the tenant was aware of the legal consequences, the action of the tenant is only willful and accordingly, he ordered eviction.

13.The Appellate Authority allowed the appeal on the ground that the tenant had paid the entire arrears through banker's cheque before entering appearance in the R.C.O.P.and that no notice was issued by the landlord to the tenant before filing the eviction petition.

The Appellate Authority heavily relied on the decision reported in 2003(3) CTC348(Kunnus v.

Munirudhin and others).to come to the conclusion that the learned Rent Controller should have given reasonable time not exceeding 15 days, to enable the tenant to pay the rent, whenever eviction petition is instituted without any pre-suit notice.

14.I have considered the submissions made by the learned counsel on either side and the findings rendered by both the courts below.

In order to arrive at a just and proper conclusion in this matter, the relevant provision under the Pondichery Buildings (Lease & Rent Control) Act need to be looked into which is extracted as hereunder:- ".10(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf.

If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied-- (i) that the tenant has not paid or tendered the rent due by him in respect of the building, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable.

Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not willful, he may notwithstanding anything contained in section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.

(Explanation.-For the purpose of this sub-section, default to pay or tender rent shall be construed as willful, if the default by the tenant in the payment or tender of rent continues after the issue of two months' notice by the landlord claiming the rent).".

15.A perusal of the above provision shows that the landlord can seek eviction of the tenant if he has committed default in payment of rent and such default is also willful.

If the Rent Controller is satisfied that the default committed by the tenant is willful he can order eviction under section 10(2(i).Such satisfaction is automatic if the tenant fails to pay the rent inspite of notice issued by the landlord giving him two months time to pay the rent.

This is evident from the explanation made to Section 10(2)(i). On the other hand, if the Rent Controller is not satisfied that the default is willful, then he may give the tenant 15 days time to make the payment and if the tenant pays the rent within such time, then the Rent Controller shall reject the application.

This is what contemplated under the proviso to Section 10(2)(i). Thus, both explanation and proviso are to be applied only under the circumstances stated therein and not otherwise.

In spite of granting 15 days time, as contemplated under the proviso, if the tenant does not pay the rent, then the willful conduct is evident and here again, the eviction is automatic.

It is also to be noted that the said Act nowhere contemplates that the tenant would enjoy absolute immunity if he pays the rent on or before the date of the first hearing of the R.C.O.P. It is also not found anywhere in the Act to the effect that such conduct of payment would prohibit or exclude the courts from construing such default as 'willful'.

16. Further, a perusal of the explanation to Sec. 10(2)(i) would show that if the default continues even after two months notice, then it shall be construed as willful and if the tenant pays the arrears within two months from the date of receipt of such notice, then the default shall be construed as not willful.

Thus, the explanation has to be read along with sub section (2)(i) of Section 10.

Though the main provision viz.

10(2)(i) does not contemplate issuance of any pre-suit notice by the landlord, only the explanation introduced to such main provision refers about two months notice.

Here again, it is to be noted that it does not mandate such issuance of pre-suit notice and on the other hand, it only implies that it is optional on the part of the landlord.

Hence, in the absence of any mandatory requirement for the landlord under the statute to issue pre-suit notice, it is needless to say that such issuance of notice is

only optional.

17. The scope and ambit of proviso and explanation to Section 10(2)(i) were elaborately considered by the Honble Supreme Court in the famous Sundarampillais case reported in 1985(1) SCC591. The Apex Court after analyzing the issue in detail, has observed at paragraph Nos. 60 to 63 as follows: ".60.

To begin with, S.

10(2)(i) of the Act lays down that where the Controller is satisfied that the tenant has not paid or tendered the rent within 15 days after the expiry of the time fixed in the Agreement of tenancy or in the absence of any such Agreement by the last date of the month next following that for which the rent is payable, he (tenant) undoubtedly commits a default.

Two factors mentioned in S.

10(2)(i) seem to give a clear notice to a tenant as to the mode of payment as also the last date by which he is legally supposed to pay the rent.

This, however, does not put the matter beyond controversy because before passing an order of eviction under the proviso, it must also be proved that the default was willful and if the Controller is of the opinion that the default in the circumstances and facts of the case was not willful, in the sense that it did not contain any of the qualities or attributes of a willful default as indicated by us above, he may give the tenant a reasonable time, not exceeding 15 days, to pay the entire rent and if this is complied with the application for ejectment would stand rejected.

The difficulty, however, is created by the Explanation which says that once a landlord gives a two months' notice to his tenant for paying the arrears of rent but the tenant continues in default even thereafter, then he is liable to be evicted.

There is a good deal of force in this argument which has its own advantages.

In the first place, it protects the court from going into the intricate question as to what is a willful default and whether or not the conditions of a willful default have

been satisfied which if permitted would differ from case to case and court to court.

But the difficulty is that if such a blanket ban is put on the court for not examining the question of willful default once the conditions laid down in the Explanation are satisfied then it would undoubtedly lead to serious injustice to the tenant.

A subsidiary consequence of such an interpretation would be that even though the tenant, after receipt of the notice, may be wanting to pay the arrears of rent but is unable to do so because of unforeseen circumstances like, death, accident, robbery, etc., which prevent him from paying the arrears yet under the Explanation he has to be evicted.

61.

Another view which, in our opinion, is a more acceptable one and flows from the actual words used by the proviso is that where the Explanation does not apply in the sense that the landlord has not issued two months' notice, it will be for the Court to determine in each case whether the default is willful having regard to the tests laid down by us and if the Court finds that the default is willful then a decree for eviction can be passed without any difficulty.

62.

Another difficulty in accepting the fiRs.view, viz., if two months' notice is not given, the tenant must not be presumed to be a willful defaulter, is that in such a case each landlord would have to maintain a separate office so that after every default a two months' notice should be given and if no notice is given no action can be taken against a tenant.

We are unable to place such an unreasonable restriction on the landlord to give two months' notice after every default which may or may not be possible in every case.

A correct interpretation, in our opinion, would be that where - (1) no notice, as required by the Explanation, is given to the tenant, the Controller or the court can certainly examine the question whether the default has been willful and to such a

case the Explanation would have no application, (2) where the landlord chooses to issue two months' notice and the rent is not paid then that would be a conclusive proof of the default being wilful unless the tenant proves his incapability of paying the rent due to unavoidable circumstances.

63. The argument of the counsel for the landlords was that even if a notice under the Explanation is given that does not take away the jurisdiction of the proviso to determine whether or not the default has been wilful if it contains the qualities and attributes referred to above because what the Explanation does is merely to incorporate an instance of a wilful default and is not conclusive on the point and would have to be construed by the court in conjunction with the conditions mentioned in the proviso.

We are, however, unable to go to this extreme extent because that will actually thwart the object of the Explanation.

As we read the Explanation, it does not, at all take away the mandatory duty cast on the Controller in the proviso to decide if a default is wilful or not.

Indeed, if the landlord chooses to give two months' notice to his tenant and he does not pay the rent, then, in the absence of substantial and compelling reasons, the Controller or the court can certainly presume that the default is wilful and order his eviction straightaway.

We are unable to accept the view that whether two months' notice for payment of rent is given or not, it will always be open to the Controller under the proviso to determine the question of wilful default because that would render the very object of Explanation otiose and nugatory.

We express our view in the matter in the following terms. (1) Where no notice is given by the landlord in terms of the Explanation, the Controller, having regard to the four conditions spelt out by us has the undoubted discretion to examine the question as to whether or not the default committed by the tenant is wilful.

If he feels that any of the conditions mentioned by us is lacking or that the default was due to some unforeseen circumstances, he may give the tenant a chance of

locus poenitentiae by giving a reasonable time, which the statute puts at 15 days, and if within that time the tenant pays the rent, the application for ejectment would have to be rejected.

(2) If the landlord chooses to give two months' notice to the tenant to clear up the dues and the tenant does not pay the dues within the stipulated time of the notice then the Controller would have no discretion to decide the question of wilful default because such a conduct of the tenant would itself be presumed to be wilful default unless he shows that he was prevented by sufficient cause or circumstances beyond his control in honouring the notice sent by the landlord."

Thus, from the law laid down by the Apex Court, it is clear that the learned Rent Controller can act under two circumstances to order eviction on the ground of willful default.

FiRs.one being where there was no notice issued by the landlord.

In such circumstances, the learned Rent Controller has the discretion to examine the question as to whether the default committed by the tenant is willful and if he feels that it is not so, then he should give reasonable time to the tenant viz.

15 days for making the payment.

If the tenant makes such payment within the time stipulated, he has to reject the application for eviction.

The next circumstance being where the landlord had issued two months' notice.

If any such notice was issued by the landlord and the tenant fails to pay the rent within the time stipulated, then the learned Rent Controller has to construe the conduct of the tenant as willful and order eviction.

Bearing this settled position of law in mind, let me consider the issue involved in this case further.

18.In this case, admittedly no pre-suit notice was issued by the landlord.

Consequently, there is no question of application of explanation under section 10(2)(i) to this case.

On the other hand, what is to be seen is as to whether the default committed by the tenant is willful as per section 10(2)(i) coupled with the proviso and even if there is any default, whether tendering of the defaulted rent on or before the fiRs.date of hearing of the eviction proceedings would make such default as not willful.

19.The tenant herein admits the period of default.

However, she came forward with certain explanation to contend that the same was not willful.

The fiRs.reason is about the illness of her husband.

The learned Rent Controller found that there was no oral or documentary evidence produced to show that the husband of the respondent/tenant was taking treatment in homeopathy or siddha medicine.

It was also found by him that the tenant has not proved that they stayed outside the Pondicherry from February 2003 to July 2003.

While considering the second reason with regard to the alleged compromise talk between the parties, the learned Rent Controller found that the compromise talk was effected only subsequent to the filing of the R.C.O.P.as has been admitted by R.W.2 during the cross-examination.

In respect of the third reason regarding the alleged demand of enhanced rent by the landlord, the learned Rent Controller found that the tenant has not proved such allegation even by making any suggestion to P.W.1 and also while examining R.W.1 in this regard.

Once the Rent Controller found all these reasons as not proved, then he need not exercise his discretion under the proviso to Section 10(2)(i) and on the other hand, he can order eviction, as has been rightly done in this case.

20.The Appellate Authority has found at paragraph No.14 of his judgment that the fiRs.reason given by the tenant viz.

illness of the husband is not acceptable.

It is specifically found by the Appellate Authority that there was no medical record to show that during the relevant period, the family of the tenant was away from Pondicherry due to illness of R.W.1 and therefore she was not in a position to pay the rent.

Except dealing with the fiRs.reason viz.

illness of R.W.1, the Appellate Authority has not gone into and considered the other reasons given by the tenant.

A perusal of the order passed by the Appellate Authority shows that he has not adverted his attention to those reasons anywhere in the order and given any finding in favour of the tenant on those reasons.

Thus, it has to be construed that the Appellate Authority, in effect has not set aside the finding rendered by the learned Rent Controller in respect of those reasons given by the tenant.

The Appellate Authority has however proceeded to allow the appeal based on two other grounds viz.

absence of pre-suit notice and payment of arrears of rent before the fiRs.appearance in the rent control proceedings.

21.In so far as the finding of the Appellate Authority in respect of pre-suit notice is concerned, I have already discussed in detail that the requirement of issuing pre-suit notice is not mandatory and it is only optional and therefore, the landlord cannot be found fault with in not issuing any pre-suit notice.

Likewise, the Appellate Authority also erred in observing that the learned Rent Controller should have given reasonable time not exceeding 15 days to enable the tenant to pay the rent.

This finding rendered by the Appellate Authority is by misconstruing the proviso to Section 10(2)(i) scope of which I have considered and dealt with in detail supra.

I have already pointed out that the requirement of giving 15 days time would arise only when the learned Rent Controller has found that the reasons given by the tenant in not paying the rent are genuine and the default is not willful.

In this case, the learned Rent Controller, as found supra, categorically observed that all the reasons given by the tenant were not proved and the tenant is guilty of willful default.

It is also specifically found by the learned Rent Controller that the tenant was fully aware of the legal consequences as already eviction proceedings initiated between the parties reached a finality in the civil revision petition before this Court in an earlier round of litigation.

Thus, the learned Rent Controller has not only found that the reasons given by the tenant are not genuine and proved and also found that the tenant had full knowledge of the legal consequences.

The learned Appellate Authority has not considered any of these aspects and has allowed the appeal and rejected the eviction petition, on an erroneous view of law.

22. In my considered view, depositing the rent at the fiRs. appearance would not absolve the tenant's liability from proving that the default committed by her is not willful.

If the landlord has chosen to issue notice demanding arrears of rent and the tenant pays within the time stipulated therein then she can take shelter under explanation to Section 10(2)(i) and say that the default is not willful.

But in this case, no such notice was issued to the tenant.

She herself volunteered the payment before the learned Rent Controller at the time of the fiRs. hearing, which conduct cannot be construed as a bonafide conduct on the part of the tenant when she has not paid the rent for nearly 7 months.

Even after adjusting the advance amount lying in the hands of the landlord, still the arrears payable by the tenant was to the tune of Rs.6,600/- upto the month of July 2003.

Therefore, the tenant cannot escape by saying that the landlord was retaining the advance amount.

23.The learned counsel for the petitioner also invited my attention to Ex.R42 dated 05.09.2003 which is a Memo filed by the tenant before the learned Rent Controller making the payment of Rs.12,600/-.

A perusal of the said memo shows that the tenant has not paid the money by accepting the default liability but on the other hand, it was paid without prejudice to contest the matter.

Thus, from the very memo filed by the tenant, it could be seen that the tenant has not tendered the payment of arrears by accepting her liability and on the other hand, she made such payment without prejudice to her right to contest the matter.

Thus the payment so made will not preclude the court from going into the question as to whether the default is wilful or not.

24.Now let me refer to the decisions relied on by the learned counsel for the petitioner: (i) In 2001(1) CTC356 K.S.PANDIAN v.

G.RUKMANI BAI AND THREE OTHERS.a learned single Judge of this Court has observed at paragraph Nos.15, 16, 19 and 21 as follows: ".15.The effect of the Explanation was considered by the Supreme Court in S.Sundaram Pillai v.

V.R.Pattabiraman, 1985 (98) LW49 After examining all the provisions as well as the prior decisions, the Supreme Court held as follows: ".(1) Where no notice is given by the landlord on in terms of the Explanation, the Controller, having regard to the four conditions spelt out by us has the undoubted discretion to examine the question as to whether or not the default committed by the tenant is willful.

If he feels that any of the conditions mentioned by us is lacking or that the default was due to some unforeseen circumstances, he may give the tenant a chance of

locus penitentiae by giving a reasonable time, which the statute put at 15 days, and if within that time the tenant pays the rent, the application for ejectment would have to be rejected.

(2) If the landlord chooses to give two monthss' notice to the tenant to clear up the dues and the tenant does not pay the dues within the stipulated time of the notice then the Controller, would have no discretion to decide the question of willful default because such a conduct of the tenant would itself be presumed to be willful default unless he shows that he was prevented by sufficient cause or circumstances beyond his control in honoring the notice sent by the landlord.

16.The Supreme Court also approved the view of Ratnam,J.

As he then was, in N.Ramaswamy v.

S.N.Periamuthu, 1980 (93) LW577 holding that if the landlord without issuing notice under the Explanation files a petition for eviction on the ground of willful default then in the absence of proper explanation by the tenant, the default should be construed as willful inspite of the fact that no notice had been issued by the landlord claiming arrears of rent.

19.In Rajeswari v.

Vasumai Lalchand, 1983(I) MLJ52 Mohan,J.

as he then was, held that acceptance of the rental amount after the filing of the petition for eviction will not relieve the tenant of the earlier charge of willful default.

21.The situation would be different if the landlord issues a notice under the Explanation, in which case if any amount is paid within the period of two months, the landlord is bound to accept the rent and there cannot be a complaint of willful default nor can the landlord proceed for eviction."

(ii)In 2011(1) CTC526 GUMANI BAI v.

K.MUTHUSAMY, a learned single Judge of this Court observed at paragraph Nos.12 and 14 as follows: ".This aspect as to whether the deposit of the entire

arrears of the rent made by the petitioner after receiving notice in the Eviction Petition would absolve the petitioner from the willful default was considered by this Court in the case of K.S.Pandian v.

Rukmani Bai, 2001(1) CTC356 Thus, the legal principle which could be culled out from all the above referred decisions is that the burden is on the tenant to show that the default is not intentional or deliberate.

Further, the learned Rent Controller also recorded a finding that the Tenants failed to prove their stand stating that the rent was payable in lumpsum.

Thus, the Rent Controller came to a conclusion that the failure was willful and ordered eviction.

This order was confirmed by the Appellate Authority.

The Appellate Authority also took note of the fact that the arrears of rent was not paid at the time of fiRs.hearing as contended by the petitioner.

In any event, as per the discussion in the case of K.S.Pandian, referred supra, there is no declaration of law to the effect that if the arrears are paid within the short time after the filing of the Application, there would be no default."

(iii)In another decision reported in 2002 (1) CTC796 MANICKKAMPILLAI v.

A.SAKUNTALA & OTHERS.a learned single Judge of this Court has pointed out that the Rent Control Act does not vizualise any such situation of tenant depositing the entire arrears before the learned Rent Controller to absolve the tenants conduct of the default.

Paragraph Nos.20 and 21 of the same are extracted hereunder: ".20.One other issue, which was raised in the context of default is that the tenant had deposited the entire arrears before the fiRs.hearing of the petition and hence according to Mr.Sunder Rajan, the revision petition deserves to be allowed.

On this issue, the reliance is placed on the following judgments: (1)Abdul Hameed v.

M.Sultan Abdul Kader (1996(2)L.W.525) (2)M/s.Chordia Authomobiles v.

S.Moosa (2000(I) C.T.C.742=2001-1-L.W.737) (Supreme Court) 21.I have already dealt with the said issue in detail and held that the provision of the Tamil Nadu Act does not visualise any such situation which would absolve the tenant's conduct of default, vide the order in K.S.Pandian v.

Rukmani Bai (C.R.P.No.1549 of 1996 dated 22.9.2000 = 2001-1-L.W.801).My view is also supported by K.Govindarajan,J.

In Easwara Rao v.

Ansari (1996(1) M.L.J.401) and R.Balasubramanian, J.

in The Nilgiris Co-operative Marketing Society v.

Uthandi (1998 (II) M.L.J.745 =1998-2-L.W.216).".

(iv) In 1996(2) LW752 M.V.VENKIDUSWAMI PILLAI AND10OTHERS v.

S.SWAMINATHA RAO, it was observed that it is the duty of the tenant to pay regularly every month on the due date and the landlord need not chase the tenant to get the monthly rent.

(v) In 2003(2)L.W231 BALWANT SINGH & OTHERS v.

ANAND KUMAR SHARMA & OTHERS.the Hon'ble Supreme Court has observed at paragraph Nos.4 and 5 as follows: ".4.The provisions of the said Act would clearly show that unlike Rent Control Statutes of other States, the expression 'willful default' or 'habitual default' has not been used therein.

The words are 'is in arrears'.

In the event, rent for two months is not paid a cause of action arises.

The statute mandates that the rent should be paid within the time fixed by the contract and in absence thereof by the last date of the month next following.

The obligation on the part of the tenant to pay rent in the manner laid down under the Act being a statutory' one, he must comply therewith strictly.

The statute, therefore, in other words, prescribes the period within which the rent must be rendered to the landlord by a tenant.

When the statute lays down the period during which the rent is required to be paid or deposited, the same is required to be complied with.

5. Recently, in *E. Palanisamy vss.*

Palanisamy (dead) by LRs. And others (2003 (1) SCC123, a Division Bench of this Court observed: "...The rent legislation is normally intended for the benefit of the tenants.

At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions.

Equitable consideration has no place in such matters."

(vi) In 2003(1) SCC123 *E. PALANISAMY v.*

PALANISAMY (DEAD) BY L.Rs. AND OTHERS. the Apex Court at paragraph Nos. 5 and 8 of the judgment has observed as follows: ".5....The rent legislation is normally intended for the benefit of the tenants.

At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions.

Equitable consideration has no place in such matters."

8. Admittedly the tenant did not follow the procedure prescribed under section 8.

The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken.

We are unable to agree with this.

The appellant failed to satisfy the conditions contained in Section 8.

Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straight away invoking Section 8(5) of the Act without following the procedure contained in the earlier sub-sections.

i.e., sub-sections (2), (3) and (4) of Section 8.

Therefore, we are of the considered view that the eviction order passed against the appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference."

(vii) In support of the contention that this Court has got power under revisional jurisdiction to reverse the finding of the Appellate Authority if it is found that the order is illegal, erroneous and perverse, the learned counsel for the petitioner relied on the decision reported in (2000) 1 Supreme Court Cases 451, C.CHANDRAMOHAN v.

SENGOTTAIYAN (DEAD) BY LRs.AND OTHERS.wherein while considering the scope of revisional jurisdiction under section 25 of the Act, the Apex Court has held that where the findings recorded by the Appellate Authority are illegal, erroneous and perverse, the High Court, having regard to the ambit of its revisional jurisdiction under section 25 of the Act, will be well within its jurisdiction in reversing the findings impugned before it and recording its own findings.

25.On the contrary, the following decisions are relied on by the learned counsel for the respondent/tenant: (i) The findings decision relied and reported in (2003) 1 MLJ225 KANNIKA v.

KRISHNASAMY, is between the same parties in respect of a default period commencement from June 1994 to November 1994.

Though the landlord had succeeded before the Rent Controller and the Appellate Authority, on revision by the tenant, this Court has observed at paragraph No.10 as follows: ".10.The learned counsel appearing for the revision petitioner has

brought to the notice of this Court, the decision in *Dakaya alias Dakaian v.*

Anjani, (1996) 1 L.W.25, wherein the Hon'ble Apex Court was pleased to hold as follows: ".This Court in the aforesaid case of *S.Sundaram Pillai v.*

V.R.Pattabiraman (1985) 2 S.C.R.643: A.I.R.1985 S.C.582:98 L.W.49, has indicated that default per se cannot be construed as willful and keeping in mind the beneficial purpose of the Rent Act to protect the eviction of the tenant, if the payment has been made before the institution of the suit, the cause of action for institution of the suit, will vanish.

In the instant case, immediately on receipt of demand of payment of rent, the tenant initially sent a sum of Rs.375 by money order and thereafter a bank draft for Rs.1,125 covering the entire period of default from September, 1988 to November, 1988 was sent to the landlady.

It, therefore, appears to us that there was no occasion to proceed on the footing that there was a willful default for which an order for eviction of the tenant has to be passed.

As the tenant had already sent the Bank draft covering the entire default, there was also no occasion for the Rent Controller to direct deposit of arrears within the stipulated period.

In our view, the Rent Controller, the fiRs.Appellate Court, and the High Court have failed to appreciate the incidence of tendering the entire amount under default before the institution of the suit.

As a result, the courts below have erroneously proceeded on the footing that there had been a willful default for which the landlady was entitled to a decree for eviction."

In *Kandaswamy Pathar v.*

Meenakshi Bai and another, (1996) 2 M.L.J.430, a learned single Judge of this Court, following the decision reported in *Dakaya alias Dakaian v.*

Anjani, (1996) 1 L.W.25, has held that the landlord has no cause of action for filing the rent control original petition, since the entire rent has been paid before institution of the suit.

In view of the principles laid down by the Hon'ble Apex Court, followed by this Court, the learned counsel for the revision petitioner was right in contending that the respondent herein has no cause of action to file the eviction petition on the ground of willful default after receiving the rent sent by the revision petitioner, even before filing of the Rent Control Original Petition.

In view of the said position, the courts below have committed illegality in coming to the conclusion contrary to law that the revision petitioner has committed willful default in payment of rent."

A perusal of the said order, though in respect of another period of default, would show that a finding has been rendered between the same parties to the effect that the landlord cannot have a cause of action to file eviction petition on the ground of willful default after receiving the rent sent by the tenant even before filing the R.C.O.P. The learned Judge relied on the decision of the Apex Court reported in 1996 (1) L.W.25, *Dakaya alias Dakaian v.*

Anjani, wherein it was observed that default per se cannot be construed as willful, if the payment has been made before the institution of the suit.

In fact, the facts of the decision reported in 1996(1) LW25 *DAKAYA @ DAKAIAN v.*

ANJANI, if perused would show that the tenant therein has paid the defaulted rent on receipt of notice from the landlord and therefore, the Apex Court has held that it is not willful.

26.No doubt, the above decision of this Court was in respect of very same parties however in respect of a different default period.

But, the perusal of the facts and circumstances of that case, though between the same parties, show that they are not similar to the present case.

In that case, the landlord had issued notice demanding payment of rent and thereafter, the tenant sent amount through money order and again by a bank draft covering the entire period of default.

Taking note of such conduct of the tenant, the learned Judge has observed that there was no willful default.

No doubt, the learned Judge has also observed that the landlord has no cause of action to file the eviction petition after receiving the rent sent by the tenant even before filing the rent control petition.

27. In my considered view, there cannot be any general rule of law to the effect that the default is not willful once the tenant pays the rent on or before the fiRs.hearing date of rent control proceedings.

Each case has to be considered on its own merits, facts and circumstances and there cannot be any application of finding rendered in one case to another unless the facts and circumstances of both the cases are found to be one and the same.

Even a small variation of facts may lead to a different finding and conclusion.

28. Again in 1997(2) L.W.616, A.M.A.JABBAR v.

T.S.ABDUL BARI AND 2 OTHERS, a learned single Judge of this Court has observed that since the tenant had paid the entire arrears before the effective date of the fiRs.hearing, there is no willful default committed by him.

29. A perusal of the facts and circumstances of the said case would disclose that the tenant therein had paid the entire rental arrears before the effective date of hearing by way of two money orders and the same has been received by the landlord on 03.10.1985 after filing the eviction petition.

The Court has also taken note of the earlier payments made by the tenant through money orders on 13.09.1985 and 03.10.1985.

Thus, the learned Judge by applying the proviso to Section 10(2)(i) came to the conclusion that the default committed by the tenant was not willful.

Certainly, the facts and circumstances of the said case are not similar and identical to the facts and circumstances of the present case.

The conduct of the party in each case makes the court to come to the conclusion as to whether the default committed by him is willful or not.

The conduct of one party with different set of facts cannot be relied as a precedent to another case in respect of another party with another set of facts.

Each case has to be decided on its own merits and circumstances.

Therefore, I am of the view that the said decision is also factually distinguishable.

30.The Rent Control Act, in fact, does not contemplate anywhere that the tenant would be absolved from his liability of establishing that the default as not willful, if he pays the entire arrears of rent before the fiRs.hearing date.

Only Courts have taken such view in some cases, that too based on facts and circumstances of those individual cases.

If such view taken on some individual cases has to be applied as universal rule in all cases of willful default, then the scope and ambit of section 10(2)(i) would be totally defeated, since the tenants can simply keep quiet without making any payment of rent for any number of months or years and can deposit the same into the court, immediately after the eviction petition is filed on the ground of willful default and escape from the order of eviction.

In my considered view, such would not have been the intention of the law makeRs.31.The other decision relied on by the respondent is reported in 2003 (3) CTC348 P.M.Punnoose v.

K.M.MUNNERUDDIN AND OTHERs.he Appellate Authority had in fact relied on this decision to reveRs.the findings of the Rent Controller.

However, the facts and circumstances of the present case would show that the above said decision of the Apex Court is not applicable since in this case, the landlord has not issued any notice to the tenant and the learned Rent Controller

has also not given any finding that the reasons stated by the tenant are genuine.

Therefore, the above said decision is not applicable to the present case.

32 In 2002 (4) SCC204 RAJ.MUTHUKONE (DEAD) BY L.RS.v.T.GOPALASAMI AND ANOTHER, the Apex Court while considering the decision of Sundarampillai's case once again has observed at paragraph No.6 as follows: "

In the case at hand, once the landlord gave a notice to the tenant claiming the rent in arrear. he should have waited for a period of two months from the date of service of notice and it is only on non-payment or non-tender of rent within the period of two months that the landlord could have initiated the proceedings for eviction on the ground of willful default and then it would have been for the tenant to satisfy the Rent Controller that in spite of non-payment of rent for a period of two months from the date of service of notice, he was not a defaulter for reasons.

In the present case, there is the additional fact that before the initiation of the proceedings for eviction, the factum of the tenant having deposited the rent in the Court, though in the proceedings which had stood terminated, was brought to the notice of the landlord and the landlord having initiated the proceeding for eviction withdrew the amount of rent and on the date when he sought for withdrawal, a period of two months from the date of notice had not expired.

In such circumstances, in view of the law laid down in the case of S.

Sundaram Pillai (supra) the tenant cannot be held to be a willful defaulter."

33. The above decision is also not applicable to the facts and circumstances of the present case since no notice was issued by the landlord herein and therefore, no question of waiting for a period of two months would arise in this case.

34. Considering all these facts and circumstances of the case, I find that the tenant has committed willful default and hence the order passed by the Appellate Authority is liable to be set aside.

Accordingly, the same is set aside and the order of the learned Rent Controller is restored.

Consequently, the civil revision petition is allowed and the respondent/tenant is given three months time to vacate the premises.

No costs.

vri To 1.

The Principal District Judge Puducherry 2.

The	Rent	Controller	Puducherry
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The respondent filed an affidavit of undertaking today before this Court undertaking to vacate and deliver vacant possession of the petition premises to the landlord within a period of six months from 25.07.2013 i.e.on or before 25.01.2014.

The said affidavit of undertaking is recorded.

2.

Accordingly, the respondent/tenant is directed to vacate and hand over vacant possession of the petition premises to the petitioner/landlord on or before 25.01.2014.

05.08.2013 vri

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